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Vinod Kumar a/l Verappan v D/KPL Kerry Yan & Ors

B HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO WA-22NCVC-735–11 OF 2021
RAJA AHMAD MOHZANUDDIN SHAH J
5 JUNE 2025

C *Tort — False imprisonment — Arrest and detention — High Court granted writ of habeas corpus — Allegation of wrongful detention — Claim for damages — Whether there was unlawful detention — Whether grant of habeas corpus conclusive evidence of unlawful detention — Whether there was reasonable suspicion justifying arrest — Whether damages ought to be granted*

D

On 22 November 2019, the plaintiff was detained, and a subsequent urine test showed a positive result for tetrahydrocannabinol ('THC') in the plaintiff. Thereafter, the magistrate's court issued a ten-day remand order from 23 November 2019 to 2 December 2019 for the plaintiff to be investigated E under s 3(1) of the Drug Dependent (Treatment Dependent (Treatment and Rehabilitation) Act 1983 ('the Act 283'). Upon completion of the investigation under s 3(1) of Act 283, the plaintiff was released from remand on 26 November 2019. On the same day, however, the eight defendant and his team rearrested the plaintiff. The plaintiff was informed of the reason for his arrest, F now made under s 3(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act 316'). Between 27 November 2019 to 9 December 2019, the plaintiff detention had been extended several times. Subsequently, the fourth defendant reported the plaintiff's arrest and detention to the Minister of Home Affairs on the same date, and the seventh defendant, who was then G Deputy Minister of Home Affairs, received a copy of the report. An investigation report was submitted by the second defendant on 30 December 2019 to the Minister of Home Affairs and the Inquiry Officer of the Ministry of Home Affairs ('KDN'). A copy of the report was received by the ninth defendant on behalf of the Minister of Home Affairs, along with the sixth H defendant as the KDN's Inquiry Officer. As of 22 January 2020, the seventh defendant issued a detention order under s 6(1) of Act 316. The second defendant delivered the said detention order to the plaintiff. Following that, sometime in April 2020, the plaintiff filed a writ of habeas corpus challenging his detention. The High Court granted the plaintiff's writ of habeas corpus and I ordered his release on 12 October 2020. The plaintiff now challenged the act of the defendants that allegedly led to his wrongful arrest under s 3(1) of Act 283 as well as his subsequent wrongful detention allegedly made under Act 316. The issues that arose for determination were: (a) whether the habeas corpus order established conclusive evidence that the plaintiff was unlawfully

detained, so that the defendants could not relitigate the issue; (b) whether the plaintiff was lawfully arrested under the first and second arrests; (c) whether there was a reasonable suspicion that justified arresting the plaintiff in the first place; (d) whether the plaintiff was lawfully detained under the detention order dated 22 January 2020; and (e) if plaintiff was unlawfully detained, whether the plaintiff deserved damages.

Held, allowing the plaintiff's claim:

(1) Notwithstanding the fact that the High Court had made a decision in favour of the plaintiff's writ of habeas corpus and that no appeal lay against this decision, the plaintiff must still prove his claim for false imprisonment and that this civil court was not bound by the findings in such a criminal case. Further, there was a clear distinction between public law and private law here. When dealing with a writ of habeas corpus, a detainee needed to challenge that the detaining authority had failed to comply with the procedural aspect of detention, while in a claim for false imprisonment, the plaintiff needed to claim either that the detaining authority lacked or exceeded its jurisdiction. In other words, securing a release under the public law of a writ of habeas corpus was clearly different from a claim of false imprisonment in private law (see paras 43–45).

(2) In arresting the plaintiff, the defendants relied on s 3 of Act 283. Under s 3 of Act 283, a police officer may take into custody any person whom he reasonably suspected was drug dependent. In addition, such a person may be detained for not more than 24 hours for the purpose of undergoing tests at any appropriate location. As a result, the plaintiff was arrested in compliance with the law under s 3 of Act 283. A reasonable suspicion of drug dependency led to the plaintiff's arrest in this case, as defined in s 3(1) of Act 283 (see paras 63 & 65).

(3) As for the second arrest, it was made in accordance with s 3 of Act 316. This section provided that any police officer may, without a warrant, arrest and detain a person for the purpose of investigation if the officer had reason to believe that there were grounds to justify his detention under s 6(1) of Act 316. The words 'reasonably suspects' in s 3(1) of Act 283 and the words 'reasons to believe there are grounds which could justify his detention' in s 3(1) of Act 316 had similar meanings to the legal phrase 'reasonable suspicion'. Act 316 was a structured law that was enacted specifically for preventive detention of people involved in dangerous drug trafficking activities. The purposeful approach of the Act and the Act's language indicated that there was no legal requirement that reasonable suspicion must arise only at the scene of the crime or be determined impromptu. It would not promote the purpose of the Act if

A an arrest could only be made based on what occurred at the scene of the alleged crime (see paras 70, 73 & 75).

(4) The Minister's failure to consider the second defendant's complete report constituted a violation of s 3(3) of Act 316. This was due to the fact that such a requirement had a mandatory effect on the part of the investigating officer. Obviously, the investigating officer need not personally deliver the report to the Minister since the wording was 'shall cause a copy of the complete report of the investigation to be submitted', but the end result was that it must be delivered. In this regard, it was important to note that, under s 6 of Act 316, before the Minister could make a detention order, he must consider the reports of the second defendant and the sixth defendant together (see paras 88–89).

(5) The Minister's failure to consider the reports of the second defendant and the sixth defendant together proved fatal to the defendants. The purpose of s 6 of Act 316 was to provide transparency and accountability between two individuals who were specifically tasked with the heavy responsibility of identifying reasonable grounds on which they believe a person was or had been involved in any activity related to or involving dangerous drug trafficking. It was, therefore, imperative that the Minister considered both reports before making a decision regarding a detention order. Consequently, dealing with such a fundamental issue could not be handled in a shortcut fashion (see para 90).

(6) The unlawful detention period started on 22 January 2020 and ended on 12 October 2020, totalling 264 days at RM2,000 per day for the duration of the unlawful detention. It followed that the total amount of general damages was RM528,000. The plaintiff had not complained or reported that he was exposed to inhumane conditions or abuse during his detention, which might have caused severe emotional distress. Consequently, there was no evidence that the plaintiff suffered from anxiety, depression, or stress disorders as a result of his detention. However, it could not be denied that the plaintiff was in any event falsely imprisoned. As a result, this justified the award of damages. On top of that, a further RM132,000 was also awarded as exemplary and aggravated damages, representing 1/4 of the amount of general damages (see paras 104, 108–109 & 113).

[Bahasa Malaysia summary

Pada 22 November 2019, plaintif telah ditahan dan ujian air kencing yang dijalankan selepas itu menunjukkan keputusan positif bagi tetrahydrocannabinol ('THC'). Susulan itu, mahkamah majistret telah mengeluarkan perintah reman selama sepuluh hari mulai 23 November 2019 hingga 2 Disember 2019 bagi tujuan siasatan di bawah s 3(1) Akta Penagih Dadah (Rawatan dan Pemulihan) 1983 ('Akta 283'). Setelah siasatan di bawah

s 3(1) Akta 283 selesai, plaintif telah dibebaskan daripada reman pada 26 November 2019. Pada hari yang sama, bagaimanapun, defendan kelapan bersama pasukannya telah menangkap semula plaintif. Plaintif dimaklumkan bahawa sebab penangkapannya kali ini adalah di bawah s 3(1) Akta Dadah Berbahaya (Langkah-Langkah Pencegahan Khas) 1985 ('Akta 316'). Antara 27 November 2019 hingga 9 Disember 2019, tempoh tahanan plaintif telah dilanjutkan beberapa kali. Kemudian, defendan keempat melaporkan penangkapan dan penahanan plaintif kepada Menteri Dalam Negeri pada tarikh yang sama, dan defendan ketujuh, yang ketika itu Timbalan Menteri Dalam Negeri, menerima salinan laporan tersebut. Laporan siasatan telah dikemukakan oleh defendan kedua pada 30 Disember 2019 kepada Menteri Dalam Negeri dan Pegawai Siasatan Kementerian Dalam Negeri ('KDN'). Salinan laporan tersebut diterima oleh defendan kesembilan bagi pihak Menteri Dalam Negeri, berserta defendan keenam sebagai Pegawai Siasatan KDN. Pada 22 Januari 2020, defendan ketujuh telah mengeluarkan suatu perintah tahanan di bawah s 6(1) Akta 316. Defendan kedua menyerahkan perintah tahanan tersebut kepada plaintif. Berikutan itu, pada sekitar April 2020, plaintif memfailkan writ habeas corpus bagi mencabar penahanannya. Mahkamah Tinggi membenarkan writ habeas corpus plaintif dan memerintahkan pembebasannya pada 12 Oktober 2020. Plaintif kini mencabar tindakan defendan-defendan yang didakwa membuat penangkapan salah di bawah s 3(1) Akta 283 serta penahanan salah berikutnya yang didakwa dibuat di bawah Akta 316. Isu-isu yang timbul untuk diputuskan ialah: (a) sama ada perintah habeas corpus tersebut merupakan bukti konklusif bahawa plaintif telah ditahan secara tidak sah, sehingga defendan-defendan tidak boleh melitigasi semula isu tersebut; (b) sama ada plaintif telah ditangkap secara sah di bawah penangkapan pertama dan kedua; (c) sama ada wujud syak yang munasabah yang membenarkan penangkapan plaintif pada asasnya; (d) sama ada plaintif telah ditahan secara sah di bawah perintah tahanan bertarikh 22 Januari 2020; dan (e) sekiranya plaintif ditahan secara tidak sah, sama ada plaintif berhak kepada ganti rugi.

Diputuskan, membenarkan tuntutan plaintif:

(1) Walaupun Mahkamah Tinggi telah membenarkan writ habeas corpus plaintif dan tiada rayuan boleh dibuat terhadap keputusan tersebut, plaintif masih perlu membuktikan tuntutannya bagi pemenjaraan salah dan mahkamah sivil ini tidak terikat dengan dapatan dalam prosiding jenayah tersebut. Selain itu, wujud perbezaan yang jelas antara undang-undang awam dan undang-undang persendirian dalam konteks ini. Bagi writ habeas corpus, tahanan perlu mencabar bahawa pihak berkuasa yang menahan telah gagal mematuhi prosedur penahanan. Sebaliknya, dalam tuntutan pemenjaraan salah, plaintif perlu menghujahkan bahawa pihak berkuasa yang menahan tidak mempunyai atau telah melampaui bidang kuasa mereka. Dengan kata lain,

pembebasan melalui undang-undang awam menerusi writ habeas corpus adalah berbeza sama sekali daripada tuntutan pemenjaraan salah di bawah undang-undang persendirian (lihat perenggan 43–45).

(2) Dalam membuat tangkapan pertama terhadap plaintif, defendan-defendan telah bergantung pada s 3 Akta 283. Di bawah s 3 Akta 283, seseorang pegawai polis boleh menahan mana-mana orang yang disyaki secara munasabah sebagai penagih dadah. Selain itu, orang sedemikian boleh ditahan tidak melebihi 24 jam bagi tujuan menjalani ujian di mana-mana tempat yang sesuai. Oleh itu, tangkapan terhadap plaintif adalah selaras dengan undang-undang di bawah s 3 Akta 283. Dalam kes ini, kewujudan syak yang munasabah bahawa plaintif adalah seorang penagih dadah sebagaimana takrifan s 3(1) Akta 283 telah mewajarkan tangkapan tersebut (lihat perenggan 63 & 65).

(3) Berhubung tangkapan kedua, ianya dibuat menurut s 3 Akta 316. Peruntukan ini membenarkan mana-mana pegawai polis, tanpa waran, menangkap dan menahan seseorang bagi tujuan siasatan jika pegawai tersebut mempunyai alasan untuk mempercayai bahawa terdapat asas yang boleh mewajarkan penahanannya di bawah s 6(1) Akta 316. Ungkapan 'dengan munasabah disyakinya' dalam s 3(1) Akta 283 dan ungkapan 'sebab mempercayai bahawa ada alasan yang mewajarkan penahanan orang itu' dalam s 3(1) Akta 316 membawa maksud yang serupa dengan istilah undang-undang 'syak yang munasabah'. Akta 316 merupakan undang-undang berstruktur yang digubal khusus bagi penahanan pencegahan terhadap individu yang terlibat dalam aktiviti pengedaran dadah berbahaya. Pendekatan berasaskan tujuan serta peruntukan tersebut menunjukkan bahawa tiada keperluan undang-undang yang mensyaratkan bahawa syak yang munasabah mesti timbul di tempat kejadian atau mesti ditentukan secara serta-merta. Tujuan Akta 316 akan terjejas jika penangkapan hanya boleh dilakukan berdasarkan apa yang berlaku di lokasi kesalahan yang didakwa (lihat perenggan 70, 73 & 75).

(4) Kegagalan Menteri untuk mempertimbangkan laporan lengkap penyiasatan oleh defendan kedua merupakan suatu pelanggaran s 3(3) Akta Dadah Berbahaya (Langkah-Langkah Pencegahan Khas) 1985 ('Akta 316'). Ini kerana kewajipan tersebut adalah mandatori ke atas pegawai penyiasat. Jelas bahawa pegawai penyiasat tidak perlu menyerahkan laporan itu secara peribadi kepada Menteri memandangkan perkataan yang digunakan ialah 'hendaklah menyebabkan satu salinan ... dikemukakan', namun kesannya tetap bahawa laporan itu mesti dihantar. Dalam hal ini, adalah penting untuk diperhatikan bahawa di bawah s 6 Akta 316, sebelum Menteri boleh membuat sesuatu perintah tahanan, beliau mesti mempertimbangkan

laporan defendan kedua dan defendan keenam secara bersama (lihat perenggan 88–89).

(5) Kegagalan Menteri untuk mempertimbangkan laporan defendan kedua dan defendan keenam secara bersama adalah fatal kepada kes defendan-defendan. Tujuan s 6 Akta 316 adalah untuk memastikan ketelusan dan akauntabiliti antara individu yang dipertanggungjawabkan dengan tugas berat untuk mengenal pasti asas munasabah bagi mempercayai bahawa seseorang itu terlibat atau pernah terlibat dalam apa-apa aktiviti berkaitan pengedaran dadah berbahaya. Oleh itu, adalah suatu keperluan mandatori bahawa Menteri meneliti kedua-dua laporan tersebut sebelum membuat keputusan berkaitan perintah tahanan. Justeru, isu penting sebegini tidak boleh dilaksanakan secara ringan atau sambil lewa (lihat perenggan 90).

(6) Tempoh penahanan tidak sah bermula pada 22 Januari 2020 dan berakhir pada 12 Oktober 2020, berjumlah 264 hari. Pada kadar RM2,000 sehari bagi tempoh penahanan tidak sah tersebut, jumlah ganti rugi am yang wajar ialah RM528,000. Plaintif tidak pernah membuat aduan atau laporan bahawa beliau telah didedahkan kepada keadaan tahanan yang tidak berperikemanusiaan atau penderaan yang boleh menyebabkan tekanan emosi yang serius. Oleh itu, tiada keterangan bahawa plaintif mengalami kegelisahan, kemurungan atau gangguan tekanan akibat penahanannya. Walau bagaimanapun, fakta bahawa plaintif telah dipenjarakan secara salah tidak dapat dinafikan. Justeru, pemberian ganti rugi adalah munasabah dan sewajarnya. Selain itu, mahkamah turut menganugerahkan RM132,000 sebagai ganti rugi teladan dan teruk, iaitu bersamaan 1/4 daripada jumlah ganti rugi am (lihat perenggan 104, 108–109 & 113).]

Cases referred to

Abd Malek bin Hussin v Borhan bin Hj Daud & Ors [2008] 1 MLJ 368; [2007] 3 MLRH 59, HC (refd)

Ananthagopi Alaguganesan v Menteri Dalam Negeri & Ors [2025] 8 MLJ 181; [2024] 10 CLJ 539, HC (folld)

ASP Poonnam E Keling & Ors v Sri Sanjeevan a/l Ramakrishnan [2023] 6 MLJ 651, CA (refd)

Badrul Zaman PS Md Zakariah v Superintendent, Preventive Detention Centre, Kamunting & Ors [2010] MLJU 2239; [2011] 4 CLJ 873, HC (folld)

Balakrishnan a/l Subramaniam v Penguasa Pusat Pemulihan Akhlak, Simpang Renggam, Johor Darul Takzim & Ors [2014] 10 MLJ 226, HC (refd)

Dr Muhamad Fadly Ramly v Brig Jen (Dr) Dato' Hj Samiran & Ors [2013] MLJU 1734; [2013] 5 CLJ 872, HC (folld)

Government of Malaysia v Lim Kit Siang; United Engineers (M) Berhad v Lim Kit Siang [1988] 2 MLJ 12; [1988] 1 CLJ Rep 63, SC (refd)

A *Hassan bin Marsom & Ors v Mohd Hady bin Ya'akop* [2018] 5 MLJ 141; [2018] 7 CLJ 403 (refd)
Inas Faiqah bt Mohd Helmi (an infant suing through her father and next friend, Mohd Helmi bin Abdul Aziz) v Kerajaan Malaysia & Ors [2016] 2 MLJ 1, FC (refd)
B *Lee Sau Kong v Leow Cheng Chiang* [1961] 1 MLJ 17; [1960] 1 LNS 15, CA (refd)
Onkar Shrian, Re [1970] 1 MLJ 28 (refd)
Penguasa Tempat Tahanan Perlindungan Kamunting, Taiping & Ors v Badrul Zaman PS Md Zakariah [2014] MLJU 195; [2014] 7 CLJ 533, CA (folld)
C *Sarawak Building Supplies Sdn Bhd v The Director of Forests & Ors* [2009] 9 MLJ 224, HC (refd)
Saul Hamid bin Pakir Mohamad v Inspector Abdul Fatah bin Abdul Rahman & Anor [1999] 6 MLJ 800, HC (refd)
D *Selvakumar a/l Subramaniam v Penguasa Pusat Pemulihan Akhlak, Simpang Renggam, Johor Darul Takzim & Ors* [2014] 7 MLJ 244, HC (folld)
Shaaban & Ors v Chong Fook Kam & Anor [1969] 2 MLJ 219, PC (refd)
SK Tangakaliswaran a/l Krishnan v Menteri Dalam Negeri, Malaysia & Ors [2010] 1 MLJ 149; [2009] 6 CLJ 705, FC (refd)
E *Vishnu a/l Telagan v Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2019] 6 MLJ 1; [2019] 9 CLJ 177, FC (refd)

Legislation referred to

Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987 r 7
F Dangerous Drugs (Special Preventive Measures) Act 1985 ss 3, 3(1), (2), (2)(a), (2)(b), (2)(c), (3), 5(4), 6, 6(1), (2)
Drug Dependent (Treatment and Rehabilitation) Act 1983 s 3, 3(1), (2)
Federal Constitution art 151(3)

G *Muhammad Yazid bin Mohamad Salim (with Danny Soong Hou Ming, Lee Guo Wen and Muhammad Faiz bin Mohd Zamros) (Yazid Tishondra) for the plaintiff.*
Nur Ezdiani bt Roleb (with Afiq Nazrin bin Zaharinan) (Attorney General's Chambers) for the defendants.

H

Raja Ahmad Mohzanuddin Shah J:

PRELIMINARY

I **[1]** As a reminder to myself, I would like to borrow from the summary made by jurists of Lord Tom Bingham's book titled *The Rule of Law.* Lord Tom Bingham once served as the Lord Chief Justice of England and Wales and Master of the Rolls.amongst the eight principles he considered to be the rule of law, His Lordship outlined them as follows:

(a) 'The law must be accessible and, so far as possible, intelligible, clear, and predictable'; A

(b) 'Questions of legal right and liability should ordinarily be resolved by application of the law, and not the exercise of discretion';

(c) 'The laws of the land should apply equally to all, save to the extent that objective differences justify differentiation'; B

(d) 'Legal protection of such human rights as, within that society, are seen as fundamental';

(e) 'Means must be provided for resolving, without prohibitive cost or inordinate delay, bona fide civil disputes which the parties themselves are unable to resolve'; C

(f) 'Ministers and public officers at all levels must exercise the powers conferred on them reasonably, in good faith, for the purpose for which the powers were conferred, and without exceeding the limits of such powers'; D

(g) 'The adjudicative procedures provided by the state should be fair'; and

(h) 'Compliance by the state with its obligations in international law'. E

[2] The rule of law is a fundamental aspect of life. The rule of law must begin with everyone obeying the law, whether they are individuals, corporations or the governments. In regard to the issue at hand, more specifically, it is frequently quoted that the concept of the rule of law also involves that those who exercise power should obey the law and not exceed their authority. To this end, it is important to maintain a balance between upholding society's interests and individual freedoms. In such balancing exercises, applicable laws serve as a beacon for guidance. F

G

[3] In this action, the plaintiff challenges the act of the defendants that allegedly led to his wrongful arrest under s 3(1) of the Drug Dependent (Treatment and Rehabilitation) Act 1983 ('Act 283') as well as his subsequent wrongful detention allegedly made under the Dangerous Drugs (Special Preventive Measures) Act 1985 ('Act 316'). H

[4] The defendants, however, argue that the arrest and detention were lawful under Act 283 and Act 316.

[5] Through this action, the plaintiff is seeking the following relief against the defendants: I

(a) an order for the plaintiff's arrest and detention records to be erased;

(b) alternatively, an order that the records of the plaintiff's arrest and

detention from 22 November 2019 to 12 October 2020 be declared unlawful following a habeas corpus order issued by the Shah Alam High Court on 12 October 2020;

(c) general damages, special damages, exemplary damages, and aggravated damages; and

(d) costs and financial interest.

THE CASE'S FACTS: AN OVERVIEW

[6] Approximately 4.30pm on 22 November 2019, the plaintiff was detained at PJS 3/6 Petaling Jaya, Selangor, and taken to the Narcotics Department of the Petaling Jaya District Police Headquarters ('IPD Petaling Jaya').

[7] A urine test showed a positive result for tetrahydrocannabinol ('THC') in the plaintiff.

[8] Thereafter, the Petaling Jaya Magistrate's Court issued a ten-day remand order for the plaintiff to be investigated under s 3(1) of Act 283. The court granted remand from 23 November 2019 to 2 December 2019.

[9] Upon completion of the investigation under s 3(1) of Act 283, the plaintiff was released from remand on 26 November 2019.

[10] On the same day, however, the eighth defendant ('DW3') and his team rearrested the plaintiff at approximately 11.40am. The plaintiff was informed of the reason for his arrest, now made under s 3(1) of Act 316. The arrest was made under 'Ops Damn Tokan 4.0'.

[11] As of 27 November 2019, the eighth defendant informed the plaintiff that he had been detained under s 3(2)(a) of Act 316.

[12] On 28 November 2019, the 13th defendant informed the plaintiff that his detention had been extended under s 3(2)(b) of Act 316.

[13] Following that, the second defendant ('DW4') recorded the plaintiff's statements on 2 December 2019 with the assistance of the first defendant and an interpreter, Constable Chandra Kumar a/l Sathivelai ('DW5').

[14] In addition, the plaintiff was informed on 9 December 2019 by the third defendant that his detention had been extended in accordance with s 3(2)(c) of Act 316.

[15] Subsequently, the fourth defendant reported the plaintiff's arrest and detention to the Minister of Home Affairs on the same date, and the seventh defendant, who was then Deputy Minister of Home Affairs, received a copy of the report.

[16] An investigation report was submitted by the second defendant on 30 December 2019 to the Minister of Home Affairs and the inquiry officer of the Ministry of Home Affairs ('KDN').

[17] This report was made under s 3(3) of Act 316. A copy of the report was received by the ninth defendant ('DW8') on behalf of the Minister of Home Affairs, along with the sixth defendant ('DW1') as the KDN's inquiry officer.

[18] In accordance with s 5(4) of Act 316, the sixth defendant conducted a physical investigation on the plaintiff on 10 January 2020. Afterwards, the seventh defendant received the sixth defendant's said report.

[19] As of 22 January 2020, the seventh defendant had issued a detention order under s 6(1) of Act 316.

[20] Approximately 6pm after receiving the detention order, the second defendant delivered the said detention order to the plaintiff, providing the plaintiff with the reasons for the detention order, the facts supporting it, and the notice of right to make representation (appeal).

[21] Immediately after receiving the detention order, the plaintiff acknowledged receipt. The same police interpreter assisted with this process.

[22] Subsequently, the plaintiff was sent to the Simpang Renggam Moral Rehabilitation Centre in Johor on 23 January 2020. At 2.45pm, he was processed and admitted. As the duty reception officer and the officer in charge, DW9 met with the plaintiff and explained the detention order, the reasons for detention, the right to make representations, the right to appoint a lawyer, as well as other matters related to the rules of the centre.

[23] The plaintiff's solicitors subsequently sent the Advisory Board letters of application dated 24 February 2020 and 27 February 2020.

[24] Responding to the application letters, the Advisory Board informed the plaintiff's solicitors through letters dated 26 February 2020 and 3 March 3202 that subpoenas were issued only to the investigating officers, and that for witnesses who were public servants, the plaintiff's solicitors should contact the Head of Department.

[25] The plaintiff's representation before the Advisory Board was then scheduled for 4 March 2020. Therefore, through his solicitors, the plaintiff requested that the Advisory Board subpoena Muhamad Asrul bin Mod Arapi, DW5, and Thineskumar a/l Muthu Vairevan.

[26] A further response from the Ministry of Home Affairs on 4 March 2020 indicated that the subpoena for Thineskumar a/l Muthu Vairevan was not necessary to issue a written directive as this matter would need to be considered by the State Police Chief.

[27] Thus, only the second defendant testified on the hearing day.

[28] Following that, sometime in April 2020, the plaintiff filed a writ of habeas corpus challenging his detention.

[29] The Shah Alam High Court granted the plaintiff's writ of habeas corpus and ordered his release on 12 October 2020.

ISSUES TO BE TRIED

[30] The parties submitted separate issues to be tried, totalling 12 issues. The plaintiff offered nine issues, whereas the defendants offered three.

[31] I have endeavoured to digest, summarise and combine the parties' issues to be tried that I believe are relevant and sufficient to resolve the dispute at hand, despite the parties not agreeing to file them as common issues for trial.

[32] In determining this action and based on the above attempts at condensing the issues to be tried, I have identified the following:

(a) has the habeas corpus order established conclusive evidence that the plaintiff was unlawfully detained, so that the defendants cannot relitigate this issue?

(b) if the answer to the above issue is negative, was the plaintiff lawfully arrested under the first and second arrests?

(c) whether the plaintiff was lawfully detained under the detention order dated 22 January 2020? and

(d) if the court finds the plaintiff was unlawfully detained, does the plaintiff deserve damages?

[33] The trial then took place. A four-day trial was held on 12 August 2024, 14 August 2024, 15 August 2024 and 16 August 2024.

[34] There were three witnesses for the plaintiff, and nine witnesses for the defendants. **A**

THE COURT'S ANALYSIS AND FINDINGS

Has the habeas corpus order established conclusive evidence that the plaintiff was unlawfully detained, so that the defendants cannot relitigate this issue? **B**

[35] To begin with, I will discuss whether the Shah Alam High Court's decision to grant a habeas corpus order demonstrating that the plaintiff was indeed unlawfully detained has automatically led to the determination of liability in this action, resulting in the defendants being unable to defend this action, leaving the issue of quantum the only one that needs to be addressed. **C**

[36] The plaintiff claims that he was detained from 26 November 2019 to 12 October 2020 under Act 316 ('detention'). He was released from detention on 12 October 2020 after the Shah Alam High Court granted his writ of habeas corpus in Criminal Application No 44–148–04 of 2020. **D**

[37] In the plaintiff's opinion, a writ of habeas corpus will only be issued if the court determines that a detainee has been wrongfully detained. This is indeed true, as His Lordship Choor Singh J stated at p 30 of *Re Onkar Shrian* [1970] 1 MLJ 28: **E**

> The writ of habeas corpus is of English origin and to ascertain its scope we have to look at the English authorities. In Vol 11 of *Halsbury's Laws of England* (3rd Ed), the writ is described and its scope set out very clearly at p 24. It is stated that the writ is a prerogative process of securing the liberty of the subject by affording an effective means of immediate release from unlawful or unjustifiable detention, whether in prison or in private custody. By it the High Court and the judges of that court, at the instance of a subject aggrieved, command the production of that subject, and inquire into the cause of his imprisonment. If there is no legal justification for the detention, the party is ordered to be released. Release on habeas corpus is not, however an acquittal nor may the writ be used as a means of appeal. The writ is applicable as a remedy in all cases of wrongful deprivation of personal liberty. Where the detention of an individual is under process for criminal or supposed criminal causes the jurisdiction of the court and the regularity of the commitment may be inquired into. Where the personal freedom of an individual is wrongly interfered with by another, the release of the former from illegal detention may be effected by habeas corpus. The illegal detention of a subject, that is a detention or imprisonment which is incapable of legal justification, is the basis of jurisdiction in habeas corpus. **F** **G** **H** **I**

[38] A further argument by the plaintiff is that the law relating to a writ of habeas corpus is trite in that the detaining authority has the burden of proving that the detention is lawful. Similarly, this is consistent with the judgment of

His Lordship Gopal Sri Ram FCJ in *SK Tangakaliswaran a/l Krishnan v Menteri Dalam Negeri, Malaysia & Ors* [2010] 1 MLJ 149 at p 153; [2009] 6 CLJ 705 at p 710:

> [5] In my considered judgment the point at stake falls to be resolved with reference to the principles governing the burden of proof in an application for *habeas corpus.* It is settled law that on an application for *habeas corpus* the burden of satisfying the court that the detention is lawful lies throughout on the detaining authority. See, *Chng Suan Tze v The Minister of Home Affairs & Ors and other appeals* [1989] 1 MLJ 69; [1988] 1 LNS 162. In *Mohinuddin v District Magistrate, Beed* AIR [1987] SC 1977, the Supreme Court of India observed as follows in the context of art 22 of the Indian Constitution from which is drawn our art 151:
>
> > It is enough for the detenu to say that he is under wrongful detention, and the burden lies on the detaining authority to satisfy the court that the detention is not illegal or wrongful and that the petitioner is not entitled to the relief claimed. This court on more occasions than one has dealt with the question and it is now well settled that it is incumbent on the State to satisfy the court that the detention of the petitioner/detenu was legal and in conformity not only with the mandatory provisions of the Act but also strictly in accord with the constitutional safeguards embodied in article 22(5).

[39] Based on the above positions of the law, the plaintiff argues that the Shah Alam High Court's decision to grant the plaintiff's writ of habeas corpus can only mean that the detaining authority failed to prove that the plaintiff's detention was lawful and thus it has the effect of demonstrating that the plaintiff was unlawfully detained.

[40] Further complicating matters, the plaintiff argues that the defendants have not appealed the Shah Alam High Court ruling. In this regard, the defendants' case is allegedly sunk, as the findings in the aforementioned proceedings can be imported into this court and automatically determine the issue of liability.

[41] Meanwhile, the defendants argue that criminal proceedings arising out of a habeas corpus application should be distinguished from this civil litigation. The defendants further argue that in order for the plaintiff to succeed in his claim for unlawful detention, he must prove that the detention was unlawful or made in the absence or excess of jurisdiction. It is therefore not possible to use the outcome of the criminal proceedings in this civil case, according to the plaintiff.

[42] This preliminary issue will now be examined on its merits.

[43] As part of this analysis, I have examined the parties' arguments and the authorities they cite. To this end, I find that notwithstanding the fact that the

Shah Alam High Court had made a decision in favour of the plaintiff's writ of habeas corpus and that no appeal lies against this decision, I find that the plaintiff must still prove his claim for false imprisonment and that this civil court is not bound by the findings in such a criminal case.

[44] There is a clear distinction between public law and private law here. When dealing with a writ of habeas corpus, a detainee needs to challenge that the detaining authority has failed to comply with the procedural aspect of detention, while in a claim for false imprisonment, the plaintiff needs to claim either that the detaining authority lacks or exceeds its jurisdiction.

[45] In other words, securing a release under the public law of a writ of habeas corpus is clearly different from a claim of false imprisonment in private law. It seems trite to me that the law takes this position. Several authorities have guided me in making this decision, which I consider to be a definitive conclusion to the law.

[46] In order to begin, I will refer to the case of *Vishnu a/l Telagan v Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2019] 6 MLJ 1; [2019] 9 CLJ 177, where the Federal Court examined extensively the law of habeas corpus and noted that habeas corpus does not represent a discretionary remedy but rather challenges procedural irregularities. Thus, when a detainee challenges his detention as illegal, it is the detaining authority's responsibility to prove that the detention is lawful. At at pp 6–7 (MLJ); pp 183–184 (CLJ), His Lordship David Wong Dak Wah CJ (Sabah and Sarawak) clearly explained:

> The Law on Habeas Corpus Generally
>
> [10] The law on *habeas corpus* is trite. It is not a discretionary remedy. The writ must be issued if the court finds that the detenu is illegally or improperly detained. See *Yeap Hock Seng v Minister of Home Affairs, Malaysia* [1975] 2 MLJ 279 where at p 281, Abdoolcader J said as follows:
>
> > The grant of habeas corpus is as of right and not in the discretion of the court as in the case of such extraordinary legal remedies as certiorari, prohibition and mandamus. It is a writ of right against which no privilege of person or place can be of any avail (*R v Pell And Offly* 84 ER 720). The heavy musketry of the law will always be brought to bear upon any suggestion of unlawful invasion or infringement of the personal liberty of an individual in the form of habeas corpus and kindred orders where necessary to grant relief when warranted. It was aptly put in the American case of *State ex rel Evans v Broaddus* 245 Mo 123 140 that at least in times of peace every human power must give way to the writ of habeas corpus and no prison door is stout enough to stand in its way.
>
> [11] Where a detainee challenges his detention as being illegal, the burden lies on the detaining authority to show that the detention is legal ...
>
> [12] Even if a detention was originally made in exercise of valid legal power, said

detention may subsequently become invalid over a passage of time. See: *Lui Ah Long v Superintendent of Prisons, Penang* [1977] 2 MLJ 226; [1975] 1 LNS 91 where at pp 227–228 Arulanandom J said:

> The second limb of the argument merits greater consideration, ie, whether a detention which at its inception was legal could become illegal as a result of passage of time or for other reasons. The answer to this question will necessarily determine the result of this application ... In view of this it is quite obvious that the authorities have exhausted all avenues and are unable to remove the applicant to his place of embarkation or his country of citizenship. The powers of detention under s 34(1) are clearly and unambiguously limited to detention for the purposes of removal to one of two places, ie, the place of embarkation or country of citizenship and therefore the moment the detaining authorities have failed or found themselves in a position where the object of detention cannot be fulfilled, then it cannot be argued that further detention remains lawful. The purpose of the detention having been frustrated, continued detention a fortiori becomes unlawful.

[13] Further, the applicant is entitled to take advantage of any technical defect which has the effect of invalidating the detention. See generally: *Ng Hong Choon v Timbalan Menteri Hal Ehwal Dalam Negeri & Anor* [1994] 3 MLJ 285; [1994] 4 CLJ 47 where at p 294 (MLJ); p 55 (CLJ), Wan Yahya SCJ held as follows:

> [I]n cases of this nature the appellant is nevertheless entitled to take advantage of any technical imperfection which has the effect of invalidating the restrictive order; or to use the precise words of Regby J in *Ex Parte Johannes Choeldi & Ors* [1960] 1 MLJ 184 at 186:
>
> > The distinction, no doubt, is a highly artificial one. But this is an application for a writ of *habeas corpus,* and the applicants in matters which concern their personal liberty, are entitled to avail themselves of any technical defects which may invalidate the order which deprives them of that liberty

[47] Also, when looking at this issue, it is important to keep in mind that criminal cases are handled differently from civil cases in terms of processes and elements. In *Government of Malaysia v Lim Kit Siang; United Engineers (M) Berhad v Lim Kit Siang* [1988] 2 MLJ 12; [1988] 1 CLJ Rep 63, the Supreme Court distinguished not only between criminal and civil proceedings, but also between public law and private law. A detailed analysis of these aspects is provided by Salleh Abas LP at p 26 (MLJ); pp 76–77 (CLJ):

> Shorn of any emotional and psychological elements which a complaint of this nature generates, in essence and effect the complaint is an invocation of the court's aid in order to prevent not merely a threatened illegal act (the signing of the NSH contract) by the Government but also to enforce criminal law against these three Ministers. This raises a constitutional question of great importance involving the position of the Attorney-General and the dichotomy between criminal law and civil law.

> In this connection we must remind ourselves of our true function in this appeal. We are not sitting as a criminal court holding a criminal trial nor are we hearing a criminal appeal. We are also not sitting as a commission of enquiry investigating into the wisdom, malpractice and misdeed of the government and its officials. We are only sitting as a ultimate civil Court of Appeal of the nation in which our duty is to deal only with such issues of law and facts as relate and are relevant to the case.
>
> As stated previously the basis of the respondent's application for declaration is the allegation of corrupt practice by the Prime Minister and the two Ministers. VC George J in the court below admirably dealt with the legal as well as factual aspects of the offence pertaining to the negotiation and formation of this contract and he finally came to the conclusion that there were issues to be tried. But the question is; are these issues, which are in no uncertain term allegedly criminal, to be tried in a civil court by the civil process? Is the respondent's application not an invitation to the civil court to exercise criminal jurisdiction?
>
> In *Gouriet*'s case the House of Lords was confronted with similar questions. The House refused to allow the enforcement of criminal law by a civil court. Lord Diplock reminded the House of the importance of keeping a difference 'between private law and public law' meaning, in the context of that case, civil law and criminal law. In the words of Lord Diplock 'it is the failure to recognise this distinction that has ... led to some confusion and an unaccustomed degree of rhetoric in this case'. I accept this approach in view of the separation of the system of criminal justice from that of the civil justice system. It is unacceptable that criminal law should be enforced by means of civil proceedings for a declaration when the court's power to grant that remedy is only at the discretion of the court. Jurisdiction of a criminal court is fixed and certain. The standard of proof in a criminal case is different from that required in a civil case and moreover the Attorney-General is the guardian of public interest and as the public prosecutor, he, not the court, is in control of all prosecutions. How can a prosecution of this nature be done behind his back? These are some of the most serious objections to the exercise by a civil court of its discretionary power relating to declaratory and injunctive remedies. Our system requires the public to trust the impartiality and fair-mindedness of the Attorney-General ...

[48] In summary, as discussed earlier, there are two legal processes, namely habeas corpus under criminal law and the tort of false imprisonment under civil law. While both deal with the lawfulness of detention, there are different constituting elements and different remedies that can be granted by the court in each case.

[49] In *Balakrishnan a/l Subramaniam v Penguasa Pusat Pemulihan Akhlak, Simpang Renggam, Johor Darul Takzim & Ors* [2014] 10 MLJ 226, the High Court clarifies that in a habeas corpus action, the challenge was limited to procedural non-compliance by the detaining authority, whereas a false imprisonment claim would require the plaintiff to prove that the detaining authority lacked or exceeded their jurisdiction. At pp 244–245, Her Ladyship Asmabi Mohamad JC (as Her Ladyship then was) provided a clear and detailed

analysis of the issue:

> [37] Based on the foregoing, a challenge of the first and second detention orders by the plaintiff by way of habeas corpus could only be made on the grounds of non-compliance with the statutory procedures stipulated in POPOC. The court hearing the habeas corpus could only rely on all affidavits filed by the respective parties touching issues whether the procedures which had been outlined in POPOC had been complied with by the detaining authority. The court has no jurisdiction to embark on the mission to determine the issue of the merits of the detention and/or the merits of the third defendant's satisfaction in making the order under s 4(1) of the POPOC.
>
> [38] The proceedings in the habeas corpus ought to be distinguished from the writ action for common law tort of false imprisonment such as the case at hand. In a habeas corpus, the challenge was only in respect of procedural non-compliance by the detaining authority whereas in an action under the common law tort of false imprisonment, the plaintiff would have to show absence or excess of jurisdiction on the part of the defendants. The remedy in a habeas corpus is the immediate release of the *corpus* from a restraint. This principle had been well illustrated by RJ Sharpe in the learned author's book entitled *The Law of Habeas Corpus* as follows:
>
> > False imprisonment is not a remedy which takes the place of *habeas corpus* as it will not ordinarily be used to obtain immediate release from a restraint, but it does afford one means of redress for anyone who has been unlawfully imprisoned. The civil action in damages will only succeed where there has been absence or excess of jurisdiction. Moreover, it by no means follows that success on habeas corpus, even on the grounds of jurisdictional error will afford the basis for an action in false imprisonment. The matter is not res judicata.
>
> [39] Hence the fact that a habeas corpus had been issued by the High Court would not grant an automatic right to the plaintiff to damages as claimed herein. In the common law tort of false imprisonment, the plaintiff still had the evidentiary burden to prove that his detention was unlawful and for this court to decide on the issue of liability first before making the award for damages as prayed. The plaintiff has a duty to prove his case on the balance of probabilities that he was unlawfully arrested and/or detained, demonstrating that there was absence or excess of jurisdiction on the part of the defendants.

[50] This position of the law was reinforced by the decision of the Court of Appeal in *ASP Poonnam E Keling & Ors v Sri Sanjeevan a/l Ramakrishnan* [2023] 6 MLJ 651. It was observed by Her Ladyship Azimah Omar JCA that a High Court was not bound by the habeas corpus court's decision even if the decision was not appealed against. At p 661, Her Ladyship expressed the following opinion:

> [16] *Secondly,* the learned judge fell into error in finding that the High Court was bound by the decision of the habeas corpus court and must inevitably find that the remand was similarly unlawful. We have identified that this error was brought about by the plaintiff's out-of-context reading of the principle expounded in the Court of Appeal case of *Shahrudi Abidin v Datuk Wira Abu Seman Yusop Timbalan Menteri*

Dalam Negeri Kementerian Dalam Negeri Malaysia & Ors [2021] 1 CLJ 52. The plaintiff selectively and in isolation staunchly relied on the following excerpt of the decision:

> *The respondents, by not appealing against the order made in the habeas corpus proceedings, must be taken to have accepted the findings of the court as correct and valid.* In the circumstances, it was not open to the respondents to suggest that the *habeas corpus* proceedings were irrelevant and could not be accepted as evidence. (Emphasis added.)

[17] However, this excerpt was not at all reflective of the entirety of the Court of Appeal's decision in *Shahrudi*'s case. We take this view because in *Shahrudi*'s case the Court of Appeal did not state that the failure to appeal against a habeas corpus decision can automatically be deemed as an admission to the correctness of the civil claim for false imprisonment. What was instead actually found and decided by the Court of Appeal was the extreme opposite. The Court of Appeal in plain and obvious terms instead found that a successful habeas corpus decision (even one which was not appealed against) is not conclusive evidence and does not form the basis of a civil action for false imprisonment ...

Whether the plaintiff was lawfully arrested under the first and second arrests?

[51] After determining that there is no automatic importation of the findings contained in the criminal application to this court, it will be necessary for me to determine whether the arrest and detention of the plaintiff were lawful.

[52] As part of this claim, the plaintiff contends that the first arrest on 22 November 2019 was just a sham. While nothing was found on the plaintiff's body during such arrest, the plaintiff was still taken back to the police station for a urine test, which resulted in the police finding a trace of THC drug in his urine, resulting in a positive test.

[53] According to the plaintiff, this arrest by the police had no basis in actuality since when they approached him at the roadside of the area known as PJS 13, the police did not have probable cause or suspicion for the arrest. Further complicating matters, the plaintiff was subsequently remanded for four days by a magistrate. A chain of events then followed. As a result, the plaintiff was arrested a second time under Act 316 on 26 November 2019.

[54] Likewise, the plaintiff argues that there was no basis for the second arrest since no drugs were found on the plaintiff during the first arrest. Moreover, the defendants did not demonstrate that there was reasonable suspicion that the plaintiff was involved in drug trafficking.

[55] As a result, the plaintiff asserts forcefully that both arrests committed by the defendant were unlawful, which entitles him to compensation for his 326-day false imprisonment.

[56] The defendants, on the other hand, argue that both the plaintiff's arrests were lawful. This is because they were based on reasonable suspicion that the plaintiff was involved in drug trafficking. To succeed on the tort of false imprisonment, the plaintiff must discharge the burden of proving that the arrest was unlawful on a balance of probabilities. The plaintiff, according to the defendants, lacks proof of this.

[57] I will now consider this issue from the perspective of the parties. It all boils down to whether there was a reasonable suspicion that justified arresting the plaintiff in the first place.

[58] As outlined above, the plaintiff argues that reasonable suspicion did not exist to justify the arrest. According to the plaintiff, everything was preplanned because the arrest was made to buy more time for the defendants to get the relevant approval for detention under Act 316. Furthermore, all police officers involved in the operation knew that the operation was intended to arrest a suspect involved in drug trafficking.

[59] In the cross-examination of the defendants' witnesses, it was also established that the police had obtained intelligence prior to the arrest that an Indian male was carrying out drug trafficking activities in Petaling Jaya, along with information on his identity and name. Further compounding the problem, according to the plaintiff, DW2 did not mention any of those things in his police report.

[60] Hence, the plaintiff argues that the arrest was just a camouflage to keep the plaintiff in custody until they obtained approval to re-arrest the plaintiff under Act 316.

[61] Consequently, when the second defendant obtained such approval on 26 November 2019, the plaintiff was released but re-arrested immediately. Therefore, it is the plaintiff's firm position that the first arrest was made for collateral reasons and in bad faith. Aside from that, no charges were filed against the plaintiff. As a result, both arrests were unlawful in the plaintiff's opinion. It follows, then, that the principles of unlawful detention found in cases of habeas corpus also apply to this case.

[62] The defendants did not dispute the plaintiff's account that there were elements of an intelligence source, an operation, and finally the detention of

the suspect, except for the fact that they were allowed to conduct as such. In light of the same, reasonable suspicion existed for arresting the plaintiff. Thus, the detention was lawful.

[63] In order to begin my analysis of this issue, I will examine the relevant sections under Act 283 and Act 316. The first pertains to the first arrest. In arresting the plaintiff, the defendants relied on s 3 of Act 283. Under s 3 of Act 283, a police officer may take into custody any person whom he reasonably suspects is drug dependent. In addition, such a person may be detained for not more than 24 hours for the purpose of undergoing tests at any appropriate location.

[64] Section 3 of Act 283 provides as follows:

> 3 Detention of suspected drug dependant for tests.
>
> (1) An officer may take into custody any person whom he reasonably suspects to be a drug dependant.
>
> (2) A person taken into custody under subsection (1) may be detained for a period not exceeding twenty-four hours at any appropriate place for the purpose of undergoing tests.

[65] As a result of examining s 3 of Act 283, I find that the plaintiff was arrested in compliance with the law under s 3 of Act 283. A reasonable suspicion of drug dependency led to the plaintiff's arrest in this case, as defined in s 3(1) of Act 283. Consequently, he was taken to the police station, which was an appropriate location, for a urine test, in accordance with s 3(2) of Act 283. As described above, this resulted in the plaintiff testing positive for THC.

[66] In this case, a warrant is not required if urine is taken within 24 hours. Alternatively, if the urine test cannot be conducted within 24 hours, the authority may apply for remand of the detainee by bringing him before a magistrate, as the defendants did in this case.

[67] However, even assuming for a moment that the first arrest was unlawful, the plaintiff is entitled to pursue his false imprisonment claim up to the point of judicial intervention only. In *Hassan bin Marsom & Ors v Mohd Hady bin Ya'akop* [2018] 5 MLJ 141; [2018] 7 CLJ 403, His Lordship Jeffrey Tan FCJ stated at pp 188 and 190 (MLJ); pp 453 and 455 (CLJ) that liability for false imprisonment ceases when a judicial act is involved:

> [135] If the defendant wrongly gives the plaintiff into custody and then the Magistrate remands the plaintiff, the defendant is answerable in false imprisonment for damages up to the point of the judicial remand. Once a judicial act interposes, liability for false imprisonment ceases ... (*The Law of Torts* by Harry Street (7th Ed) at p 27; see also *Torts: Commentary and Materials* (11th Ed) by Carolyn Sappideen,

A Prue Vines and Penelope Watson at p 60) ...

> [141] In short, a judicial order provides the defence of lawful authority for the detention or imprisonment (see Hepple and Matthews' *Tort Law*: *Cases and Materials* by David Howarth, Martin Matthews, Jonathan Morgan, Janet O'Sullivan, Stelios Tofaris (2016 Publication) at p 750).

B

[68] Nevertheless, this is not the plaintiff's case against the defendants for the court to consider. The plaintiff is seeking compensation for the entire detention period.

C

[69] My next focus will be on the second arrest.

[70] As for the second arrest, I find that it was made in accordance with s 3 of Act 316. This section provides that any police officer may, without a warrant, D arrest and detain a person for the purpose of investigation if the officer has reason to believe that there are grounds to justify his detention under s 6(1) of Act 316.

E **[71]** Section 3 of Act 316 provides:

> 3 Power to detain suspected persons.
>
> (1) Any police officer may, without warrant, arrest and detain, for the purpose of investigation, any person in respect of whom he has reason to believe there are grounds which could justify his detention under subsection 6(1).

F

[72] Specifically, what led to the existence of reasonable suspicion that led to the arrest of the plaintiff, especially when the plaintiff asserts that how could the plaintiff be arrested at the roadside when there was no evidence of G incrimination found during the pat search, and yet still the plaintiff was taken to the police station? According to the plaintiff, this indicates that the police did not have reasonable suspicion to arrest him.

[73] After reviewing the arguments of the parties and the law, I conclude that H the words 'reasonably suspects' in s 3(1) of Act 283 and the words 'reasons to believe there are grounds which could justify his detention' in s 3(1) of Act 316 have similar meanings to the legal phrase 'reasonable suspicion'.

I **[74]** When it comes to the law regarding suspicion, I believe the law is clear that suspicion arises either at or near the point at which an investigation begins. As I interpret this position, reasonable suspicion may arise not only on the spot at the scene but also during the investigation process, which may occur prior to the arrest. The following observations led me to this conclusion.

[75] In this regard, reasonable suspicion can arise before the plaintiff is arrested on site. It is important to note that Act 316 is a structured law that was enacted specifically for preventive detention of people involved in dangerous drug trafficking activities. The purpose of Act 316 is to accomplish this. The purposeful approach of the Act and the Act's language indicate that there is no legal requirement that reasonable suspicion must arise only at the scene of the crime or be determined impromptu. It would not promote the purpose of the Act if an arrest could only be made based on what occurred at the scene of the alleged crime.

[76] This conclusion is based on the decision of the Privy Council in *Shaaban & Ors v Chong Fook Kam & Anor* [1969] 2 MLJ 219, in which Lord Devlin described the legal meaning of reasonable suspicion. This is what His Lordship said at p 221:

> ... Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking: 'I suspect but I cannot prove'. Suspicion arises at or near the starting-point of an investigation of which the obtaining of prima facie proof is the end. When such proof has been obtained, the police case is complete; it is ready for trial and passes on to its next stage. It is indeed desirable as a general rule that an arrest should not be made until the case is complete. But if arrest before that were forbidden, it could seriously hamper the police. To give power to arrest on reasonable suspicion does not mean that it is always or even ordinarily to be exercised. It means that there is an executive discretion ...

[77] With the above interpretation in mind, an element of reasonable suspicion can arise even through the gathering of intelligence and related information. Moreover, the positive urine test that contained THC further supported this conclusion, alongside other sources of information.

[78] More specifically, witnesses who testified on behalf of the defendants corroborated that a reasonable suspicion existed, which led to the arrest. Herewith, I reproduce the testimony of DW2, the eighth defendant ('DW3'), and the second defendant ('DW4').

[79] The following is what DW2, a police sergeant who took part in Ops Tapis and was responsible for arresting the plaintiff on 22 November 2019, testified in court:

> Cross-examination:
>
> YZD: Secaraamnya, sebab kita nak bantu Mahkamah faham, sebelum kita nak kata Sarjan atau pihak Kerajaan atau pihak polis ikut prosedur ke tak ikut prosedur ini, kita kena bantu Yang Arif faham apa kerja yang kita buat. Boleh Sarjan beritahu secara ringkas, Bahagian Risikan, sebab saya tengok ada tiga, Risikan, Operasi dan Tahanan ini, apa skop kita, secara ringkas. Kita nak bagi Mahkamah faham. Saya pun perlu faham juga secara jujurnya.

Aliff: Saya penugasan Risikan Operasi Tahanan adalah mencari maklumat, menjalan risikan. Seterusnya kita membuat operasi seperti yang saya nyata, Operasi Tapis dan tahanan ini lebih kepada kes file.

...

YZD: Kalau kita nak keluar menangkap orang ataupun menapis suspek-suspek lah. Kita kata kan, orang-orang di jalankan sebagai suspek ini, mesti akan ada risikan terlebih dahulu, betul?

Aliff: Ya, saya.

...

YZD: Mengenai operasi tapis. Ops Tapis sebab ada risikan baru operasi. Betul?

Aliff: Betul.

YZD: Betul. Jadi sebelum itu, Ops Tapis, Operasi Tapis ini, apa risikan yang kita dapat?

Aliff: Saya terima maklumat dan hasil pemantauan ada terdapat aktiviti pengedaran di Kawasan tersebut.

YZD: So, risikan dia ini, risikan yang kita dapat, kalau saya salah betulkan saya, ya Sarjan. Saya terima jawapan Sarjan. Risikan yang kita dapat ialah sebelum kita buat ops itu, risikan kita dapat ialah, wujud berita mengenai aktiviti pengedaran dadah di kawasan tersebut. Betul?

Aliff: Betul.

YZD: Dan bila kita katakan, 'kawasan tersebut' ini, kita merujuk kepada kawasan Petaling Jaya, PJS 3?

Aliff: Betul.

YZD: PJS 3, baik. Setuju dengan saya risikan itu tidak datang dengan maklumat siapa pengedar. Betul?

Aliff: Tak setuju.

YZD: Makna dia dah bagi tahu siap-siap siapa pengedar?

Aliff: Satu lelaki India.

YZD: Ok, maknanya maklumat yang kita dapat ialah kononnya pengedaran dadah ini dilakukan oleh satu lelaki India. Betul?

Aliff: Betul.

YZD: Nama kita tak tahu?

Aliff: Nama kita dapat.

YZD: Sebelum kita tangkap ni?

Aliff: Kita dapat nama panggilan. Nama panggilan kita dapat.

YZD: Ok, apa nama panggilan dia?

Aliff: Vinod.

...

YZD: Ini soalan saya kepada Sarjan, sebelum keluar dan berjumpa dengan Vinod ini, Sarjan dah tahu ke macam mana rupa Vinod ini?

Aliff: Dah.

YZD: Dah tahu dah.

Aliff: Ya.

YZD: Macam mana kita tahu?

Aliff: Based on pada kita punya repot tangkapan lampau itu, apa semua.

YZD: Sebab tadi yang Sarjan bagi tahu, dia hanya ada nama gelaran Vinod.

Aliff: Vinod.

YZD: Sama ada Vinod dengan Vinodkumar a/l Verappan ini, orang yang macam mana sama itu, semua itu macam kita tahu itu?

Aliff: Daripada risikan itu kita dapat pengecaman. Dia cakap, badan sekian, muka sekian, rambut sekian.

YZD: Kita menghampiri lelaki India itu kerana kita dah tahu dia Vinod ke atau kita sebenarnya menghampiri sebab kita tak tahu dia Vinod dan berada dalam keadaan mencurigakan? Yang mana satu?

Aliff: Kedua-dua.

...

YZD: Dan satu-satunya alasan kenapa selepas kita dah buat pemeriksaan badan, tak menjumpai apa-apa yang mengaitkan lelaki India bernama Vinod dengan aktiviti pengedaran dadah, kita masih bawa dia ke balai polis adalah kerana kita sebenarnya dah tahu, dah. Memang nak pergi tangkap dia, betul? Itu sahaja alasan dia.

Aliff: Dan kita check dia punya

YZD: Ya lah, urine di balai. Betul?

Aliff: Kita cek dia punya rekod.

...

YZD: Dan bila kita kata berkenaan rekod lampau ini, rekod ini kita bercakap tentang rekod dia ditahan ke atau dituduh di mahkamah? Yang mana satu?

Aliff: Rekod tangkapan polis.

Re-examination:

NUR: Baik. Kemudian kamu juga ditanya mengenai asas penangkapan kamu. Dia rujuk kamu kepada baris ketiga laporan kamu, yang dikatakan saya kenalkan diri, apa semua. Alright, di situ dia ada tanya pada kamu, peguam Plaintif ada tanya, tangkapan kamu pada ketika itu yang dibuat pada 22hb itu, sama ada asasnya ialah

kamu mengesyaki, mencurigakan, apa itu, sama ada Vinod ini dianggap dalam mencurigakan ataupun kamu menghampiri dia kerana kamu tahu itu adalah Vinod. Kamu nyatakan ataupun keterangan kamu ialah kedua-duanya.

Aliff: Ya, Puan.

NUR: Terangkan kepada Mahkamah apakah maksud kedua-duanya itu?

Aliff: Maksud saya, kerana semasa saya sampai di tempat tersebut, saya kenal pasti Vinod dan kemudian Vinod berada dalam keadaan gelisah dan cuba untuk beredar daripada tempat tersebut. Jadi pihak kami telah tahan dia.

...

NUR: Tapi kamu masih menahan Vinod dan kamu ditanya soalan sebegitu. Baik, boleh kamu terangkan kepada Mahkamah mengenai perkara ini? Walaupun kamu buat pat search, soalan itu mengenai pat search, kamu tak jumpa apa-apa. Tapi kamu masih menahan. Jadi, ditanya salah satunya ialah masih tahan walaupun tak ada pat search, walaupun tak ada alasan munasabah untuk menahan dia. Dan kamu jawab, betul. Boleh kamu terangkan kepada Mahkamah mengenai perkara ini?

Aliff: Saya tahan dan bawa balik juga Vinod ke pejabat kerana semasa di tempat kejadian, saya buat pemeriksaan rekod lampau beliau dan terdapat beberapa rekod penglibatan dalam dadah. Jadi, saya bawa balik atas tujuan untuk ujian saringan awal, Puan.

[80] As for the eighth defendant, who arrested the plaintiff during Ops Damn Tokan 4.0 on 26 November 2019, he told the court:

Cross-examination:

YZD: Betul. Maknanya, pihak polis, saya tak salahkan Inspektor sendiri. Maknanya, polis sendiri kita punya bahagian pada ketika itu sebenarnya sememangnya tahu dia akan dilepaskan dan arahan kita adalah untuk tangkap, kita kata perkataan 'semula' itu sebab kita tahu dia dilepaskan lah, betul?

INSD: Sebab yang saya tahu sebelum itu dia di dalam tahanan.

YZD: APD.

INSD: Di bawah kesalahan kes urin, Yang Arif.

Re-examination:

NUR: ... Ada beberapa siri soalan yang ditanyakan oleh peguam Plaintif kepada kamu mengenai tangkapan susulan yang kamu buat lah. Tangkapan semula ya. Ada ditanya mengenai ada tengok fail tak, bila apa, tangkapan semula itu sebelum ini ada pernah tengok fail tak, tanya tentang status siasatan yang dibuat ataupun status tangkapan yang dibuat pada 20hb November, kamu cakap tiada dan sebagainya. Baik, dan kamu memang tak dirujuk dengan apa-apa dokumen lah berkenaan dengan first tangkapan yang dibuat itu.

...

NUR: Boleh kamu terangkan... kepada Mahkamah mengenai perkara ini?

INSD: Baik, Yang Arif. Sebagaimana saya telah menjawab soalan-soalan tadi, Yang Arif. Penglibatan saya setelah saya terima arahan iaitu pada pagi 26hb, Yang Arif. 26/11/2019 daripada ketua bahagian saya iaitu ASP Sukri memaklumkan untuk membuat tangkapan susulan ke atas Plaintif di bawah Seksyen 3(1) ADB LLPK 1985 di mana ASP Sukri memaklumkan telah memperoleh kelulusan tangkap dan mempunyai keterangan-keterangan yang mengaitkan pengedaran terhadap Plaintif. Sungguhpun saya tidak dirujuk apa-apa dokumen, Yang Arif, namun saya percaya dan syaki Plaintif terlibat di dalam pengedaran sepertimana dalam siasatan fail kes yang dibuat oleh pegawai penyiasat Insp. Izhar. Itu sahaja, Yang Arif.

NUR: ... Saya merujuk kepada soalan-soalan yang ditanya. Series of question yang ditanya oleh peguam Plaintif mengenai apa yang kamu, tindakan kamu sebelum kamu menangkap Vinod pada 26/11/2019. Ada kamu cakap bahawa kamu bersetuju bahawa kamu tidak dirujuk dengan apa-apa dokumen yang menandakan Vinod telah membuat pengedaran dadah dan sebagainya. Boleh kamu terangkan kenapa kamu bersetuju mengenai perkara berkenaan?

INSD: Baik, Yang Arif. Pada 26/11/2019, saya telah diarahkan oleh ketua bahagian saya iaitu ASP Sukri untuk membuat tangkapan ke atas subjek iaitu Plaintif di bawah Seksyen 3(1) ADB LLPK. Dan ketua bahagian saya juga telah memaklumkan saya terdapat keterangan-keterangan saksi-saksi sebelum itu yang telah dirakam. Jadi saya yakin dan percaya, Yang Arif, walaupun sungguhpun saya tidak dirujuk apa-apa dokumen berkaitan dengan Plaintif ini, saya yakin dan percaya memang Plaintif terlibat, disyaki dengan aktiviti, terlibat dengan aktiviti pengedaran dadah. Oleh sebab itulah, saya telah membuat tangkapan ke atas Plaintif pada 26/11/2019. Itu sahaja, Yang Arif.

[81] Meanwhile, the second defendant being the investigating officer, said:

Cross-examination:

YZD: ... Sarjan Aliff memberi keterangan bahawa, sebab saya tanya dia Operasi Tapis ini, kita keluar mencari satu subjek yang kita tak kenal ke, atau sebenarnya kita dah ada target, you know. Sebab risikan Intel, operasi baru tahan. Dia mesti bermula dengan Intel. Jadi dia setuju dengan saya, dia kata ada risikan.

INSI: Ya.

YZD: ... Sarjan Aliff juga ada memberi keterangan bahawa kita dah tahu dia lelaki India. Kita dah tahu nama panggilan dia adalah Vinod. Saya juga tanya tahu bentuk rupa muka dia, dia kata ada sebab kita ada rekod-rekod lampau daripada risikan. So maknanya dah tahu siapa nak cari, sebagainya. Dan dia kata memang secara khusus, Intel dan taklimat itu berkenaan dengan pengedaran dadah. Betul, ASP ya?

INSI: Setuju.

YZD: Setuju. Maknanya ASP akan bersetuju dengan saya, di minda Unit pasukan ASP pada 22hb itu, kita punya mindset itu sebenarnya memang dah diberikan satu taklimat bahawa individu ini terlibat dengan pengedaran dadah, betul?

INSI: Setuju.

YZD: ... Dan kita keluar, kita dah ada Intel, taklimat, kita keluar nak tangkap dan fahaman anggota-anggota unit ASP ini, termasuk ASP, kita tangkap itu sebab syak wasangka kita terhadap aktiviti pengedaran dadah. Ya betul?

INSI: Betul.

YZD: Saya hormati ASP punya kedudukan. Saya nak tengok ASP boleh hormat dengan cadangan saya atau tidak. ASP setuju dengan saya, kalau ikut betullah, contohlah, sayalah orang awam itu. Kita keluar 22hb tak jumpa apa pada badan saya, kenderaan saya, ikutkan team kita tak ada asas untuk tahan dia, betul?

INSI: Tak setuju.

YZD: Makna dah pat search, tak ada apa. INSI Ok.

YZD: Kita sebenarnya tak ada asas untuk tahan dia pada ketika itu. Betul?

INSI: Tak setuju. Saya tak setuju.

YZD: Tapi di antara nak bawa balik ke balai itu, di lokasi bila dan buat pemeriksaan badan itu, tak ada apa-apa, itu saya cadangkan sebenarnya kita tak ada asas.

INSI: Saya tak setuju.

YZD: Tak setuju, ya?

INSI: Ya. Sebab urin itu kita mesti buat dekat tempat yang selesa untuk orang itu, kita urin dia kan? Mesti dia kita bawa balik pejabat dulu untuk kita urin dia dekat balai, kan.

YZD: Ya.

INSI: Betul?

YZD: Tapi untuk kita nak bawa balik orang untuk kita buat urin itu, undang-undang kita kata mesti kena ada satu alasan munasabah.

INSI: Itulah kita mengesyaki dia. Selain itu dia pun hisap juga kan? Penagih.

YZD: Tolak tepi urin, di lokasi tak jumpa apa-apa. Sepatutnya, tak boleh bawa balik. Betul?

INSI: Tak boleh. Saya dah cakap. Itu you punya ini, tapi ...

YZD: Saya faham.

INSI: Tak boleh. Kita mesti bawa balik. Kita mesti membuat urin dulu. Kita mengesyaki. Kita ada syak itu kan. Yang ini taka da barang tak apa, kita urin dulu, tengok macam mana. Betul?

[82] Further, this has also been proven by the findings of the inquiry officer, DW1, who was legally qualified, who had conducted further investigation and formed a conclusion after interviewing two witnesses that there was a reasonable basis for believing the plaintiff had or was involved in dangerous drug activities. Towards that end, she made the relevant report and submitted

it to the Minister. If DW1 had indicated otherwise, the situation would have been different. Further, I do not find any flaw in DW1's conduct, with the exception of what I will discuss next.

[83] Additionally, I find that the plaintiff's further detention on 26 November 2019, 27 November 2019, 28 November 2019 and 9 December 2019 were lawful under s 3(2) of Act 316 and well within the 60-day period.

[84] The provisions of s 3(2) of Act 316 are as follows:

> (2) Any person arrested and detained under this section may be detained in police custody for a period not exceeding sixty days without an order of detention having been made in respect of him under subsection 6(1):
>
> Provided that —
>
> (a) he shall not be detained for more than twenty four hours except with the authority of a police officer of or above the rank of Inspector;
>
> (b) he shall not be detained for more than forty eight hours except with the authority of a police officer of or above the rank of Assistant Superintendent of Police;
>
> (c) he shall not be detained for more than fourteen days unless a police officer of or above the rank of Deputy Superintendent has reported the circumstances of the arrest and detention to the Inspector General or to a police officer designated by the Inspector General in that behalf and the Inspector General or police officer so designated by him, as the case may be, shall forthwith report the same to the Minister.

Whether the plaintiff was lawfully detained under the detention order dated 22 January 2020?

[85] The plaintiff raises another important issue that deserves serious consideration. According to the plaintiff, the second defendant admitted during cross-examination that he did not provide his complete report to the Minister of Home Affairs ('Minister'). This is because s 3(3) of Act 316 mandates that the second defendant submit a complete report to the minister. As such, this failure proves fatal to the defendants' conduct in detaining the plaintiff.

[86] In this instance, the defendant argues that although the second defendant's report was not directly submitted to the Minister, it has no fatal effect on the plaintiff's detention. As a result, the sixth defendant thoroughly reviewed the report prepared by the second defendant, conducted her own independent investigation, and then prepared her own report pursuant to s 5(4) of Act 316. In other words, when the Minister made the detention order, he based it on the sixth defendant's report, which also incorporated the second

defendant's report. Consequently, the Minister knew all the facts before he issued the detention order.

[87] First, let me briefly review s 3(3) of Act 316, which states the following:

> (3) The police officer making an investigation pertaining to a person arrested and detained under this section shall cause a copy of the complete report of the investigation to be submitted —
>
> (a) to an Inquiry Officer appointed under subsection 5(1); and
>
> (b) to the Minister,
>
> (c) within such period as may be prescribed by the Minister by regulations made under this Act.

[88] As a result of considering this issue, I find that the Minister's failure to consider the second defendant's complete report constitutes a violation of s 3(3) of Act 316. This is due to the fact that such a requirement has a mandatory effect on the part of the investigating officer. Obviously, the investigating officer need not personally deliver the report to the Minister since the wording is 'shall cause a copy of the complete report of the investigation to be submitted', but the end result is that it must be delivered. At the very least, the sixth defendant as the inquiry officer, should have provided the Minister with the second defendant's full report along with her own report.

[89] In this regard, it is important to note that, under s 6 of Act 316, before the Minister can make a detention order, he must consider the reports of the second defendant and the sixth defendant together. The following is a reproduction of s 6(1) and (2) of Act 316 to explain how it works:

> 6 Power to order detention and restriction of persons
>
> (1) Whenever the Minister, after considering —
>
> (a) the complete report of investigation submitted under subsection (3) of section 3; and
>
> (b) the report of the Inquiry Officer submitted under subsection (4) of section 5,
>
> (c) is satisfied with respect to any person that such person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs, the Minister may, if he is satisfied that it is necessary in the interest of public order that such person be detained, by order (hereinafter referred to as a 'detention order') direct that such person be detained for a period not exceeding two years.
>
> (2) Every person detained in pursuance of a detention order shall be detained in such place (hereinafter referred to as a 'place of detention') as the

> Minister may direct and in accordance with any instructions issued by the Minister and any regulations made under section 22.

[90] Due to this, the Minister's failure to consider both reports proves fatal to the defendants. It is my view that the purpose of s 6 of Act 316 is to provide transparency and accountability between two individuals who are specifically tasked with the heavy responsibility of identifying reasonable grounds on which they believe a person is or has been involved in any activity related to or involving dangerous drug trafficking. It is therefore imperative that the Minister considers both reports before making a decision regarding a detention order. Consequently, dealing with such a fundamental issue cannot be handled in a shortcut fashion. There must be a balance between the duty to protect the nation under Act 316 and the rights of the plaintiff.

[91] As the Federal Court determined in *Vishnu Telagan v Timbalan Menteri Dalam Negeri, Malaysia & Ors,* the Minister was statutorily obliged to consider both the investigating officer's complete investigation report and the inquiry officer's report before making a detention order. His Lordship David Wong Dak Wah CJ (Sabah and Sarawak) observed at p 189:

> [41] To put it concisely, the first respondent was statutorily bound to consider the ss 3(3) and 5(4) reports before making his decision to detain the appellant. A component of those reports is the appellant's recorded statement which the mandatory provisions of the law require to be signed by the maker. It must be considered by the Minister before directing his mind to grant the detention order. Surely, he should be apprised of the full and proper picture lest there be reason for having mandatory provisions requiring him to consider those reports. Accordingly, we found no favour with what was essentially an argument that the appellant's defective impugned recorded statement could be simply slipped under the rug on the reason that the oral examinations of the appellant and other witnesses painted a good enough picture of the Minister to exercise his discretion to issue the detention order. That, to us, also defeated the purpose of having a mandatory provision requiring the said statement to be signed subject to corrections, in the first place.

[92] In light of such a failure on the part of the Deputy Minister as well as the results of the above analysis, I find that there was an absence or a lack of jurisdiction to issue such a detention order. RJ Sharpe stated in his book, *The Law of Habeas Corpus,* that:

> ... False imprisonment is not a remedy which takes the place of habeas corpus as it will not ordinarily be used to obtain immediate release from a restraint, but it does afford one means of redress for anyone who has been unlawfully imprisoned ...
>
> When an action of false imprisonment challenges the validity of a judicial or quasi-judicial decision, it would seem that the possible grounds for relief are narrower than they would be on habeas corpus. A civil action in damages will only succeed where there has been an absence or excess of jurisdiction.

A Moreover, it by no means follows that success on habeas corpus, even on the grounds of jurisdictional error will afford the basis for an action in false imprisonment.

B **[93]** For completeness, I also find that the defendants' failure to produce the sixth defendant's report did not prejudice the plaintiff. As a result, if she were to provide the detailed report to be used in these proceedings, it would reveal information that would be against the national interest, including the names of the two witnesses she interviewed. Article 151(3) of the Federal Constitution provides:

C

151 Restrictions on preventive detention

(3) This Article does not require any authority to disclose facts whose disclosure would in its opinion be against the national interest.

D

[94] Further, a series of non-compliance issues as well as procedural failures have also been raised by the plaintiff in his detailed written submissions. According to r 7 of the Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987, the representation hearing was not

E conducted in camera. Additionally, an adverse inference should be drawn from the defendants' failure to disclose the minutes of the Advisory Board's hearing and the reports by DW4 and DW1. Aside from that, there was a failure to follow a standard operating procedure in handling the plaintiff's admission, as well as not providing him with proper medical treatment. As for all these issues,

F suffice it to say that the findings of false imprisonment in the plaintiff's favour, as stated above, render them irrelevant for further consideration.

Whether the plaintiff is entitled to damages since he was unlawfully detained?

G **[95]** In light of the fact that I have found liability against the defendants, I will now turn to the question of damages.

[96] As a result of the unlawful arrest and detention of the plaintiff, the plaintiff is claiming general damages for all misery, suffering, disgrace,

H humiliation, stress, as well as physical and mental trauma. A per day rate of RM20,000 is sought for the duration of the 326-day detention period from 22 November 2019 to 12 October 2020. Thus, 326 days x RM20,000 equals RM6.52m.

I **[97]** As a reasonable and appropriate compensation for the direct infringement of his constitutional and fundamental rights, the plaintiff is claiming only half of thisamount, RM3.26m, as a reasonable and appropriateamount (see *Abd Malek bin Hussin v Borhan bin Hj Daud & Ors* [2008] 1 MLJ 368; [2007] 3 MLRH 59).

[98] The plaintiff also seeks special damages for loss of earnings for ten months. The plaintiff claims that at the time of the material event, he was working as a dispatcher and general worker for a logistics company, earning RM1,500 per month. As a result, the plaintiff seeks RM15,000 in special damages for overall loss of actual earnings.

[99] Furthermore, the plaintiff argues that the defendant's conduct constitutes oppression, is arbitrary and unconstitutional, warranting exemplary and aggravated damages.

[100] Meanwhile, the defendant argues that the plaintiff has failed to prove any of his claims about liability, so no damages are owed. In any event, if the defendants are found liable in this matter, then the defendant argues that the plaintiff should not be able to claim unreasonable relief that would lead to unjust enrichment and abuse of the court's process.

[101] I will start examining the above issues by referring to the case of *Sarawak Building Supplies Sdn Bhd v The Director of Forests & Ors* [2009] 9 MLJ 224, which dealt with the issue of damages quite extensively. The following observation was made at p 236 by His Lordship Abdul Aziz Abd Rahim J (as His Lordship then was):

> [37] It is settled law that the general rule as to the measure of damages is to put the plaintiff fairly and reasonably in the position in which he was before the damage occurred, in so far as money can do so: *Cheng Hang Guan & Ors v Perumahan Farlim (Penang) Sdn Bhd & Ors* [1993] 3 MLJ 352 at p 416. However, the amount awarded must not allow the plaintiff to profit from it: *Subramaniam Paramasivam & Ors v Malaysian Airline System Bhd* [1996] 3 MLJ 64 at pp 78–79; [2002] 1 CLJ 230 at pp 244–245 and *Tan Sri Khoo Teck Puat v Plenitude Holdings Sdn Bhd* [1949] 3 MLJ 777 at p 778.
>
> [38] The burden is on the plaintiff to show that he has suffered loss or damage and that such loss or damage is caused directly by the defendant: *Bonham-Carter v Hyde Park Hotel Ltd* (1984) 64 TLR 177 at p 178 and also *John v Dharmaratnam* [1962] MLJ 187.
>
> [39] If the plaintiff is unable to show proof of loss or damage suffered then the plaintiff may be awarded with nominal damage: *Sony Electronics (M) Sdn Bhd v Direct Interest Sdn Bhd* [2007] 2 MLJ 229 at p 246; [2007] 1 CLJ 611 at p 628. This burden to show proof lies on the plaintiff throughout; and only when the plaintiff has discharged this burden then evidential burden shifts to the defendant. If the plaintiff fails in discharging this burden, no adverse inference may be drawn against the defendant for failure to give evidence: *International Times & Ors v Leong Ho Yuen* [1980] 2 MLJ 86.
>
> [40] Applying the above principles, the defendants submitted that the plaintiff has failed to discharge the burden of proving its loss or damage and therefore should be awarded only nominal damages.

[102] With respect to this, my foremost consideration when making an order for damages is to make sure that the amount is reasonable, fair, adequate, and not excessive. In this regard, the punishment must not be punitive, but rather reflect the loss of dignity, and thus it is left to the discretion of the court on a case-to-case basis.

[103] In *Inas Faiqah bt Mohd Helmi (an infant suing through her father and next friend, Mohd Helmi bin Abdul Aziz) v Kerajaan Malaysia & Ors* [2016] 2 MLJ 1, the Federal Court held that the courts are not required to be motivated by sympathy in assessing damages, but rather to award fair compensation based on cogent evidence. The courts, therefore, should not engage in speculation in order to achieve this if there is no such proof. The following is what His Lordship Abdull Hamid Embong FCJ said at pp 10–11:

> [20] It is trite that damages serve as compensation, not a reward, less still a punishment (see *Ong Ah Long v Dr S Underwood* [1983] 2 MLJ 324). In assessing damages, the courts should not be motivated by sympathy and award fair compensation based on cogent evidence. The court should not descend into a domain of speculation ...

[104] Following a thorough review of the parties' arguments and the supporting authorities, I conclude that the unlawful detention period started on 22 January 2020 and ended on 12 October 2020, totalling 264 days at RM2,000 per day for the duration of the unlawful detention. It follows that the totalamount of general damages is RM528,000.

[105] Considering the nature of the plaintiff's claim in this regard, I find that the plaintiff still has the burden of proving his damages on the balance of probabilities. In detention cases such as this, general damages may include bodily harm, emotional distress, mental anguish, loss of liberty, and reputational damage.

[106] As to this issue, I find that the plaintiff failed to prove any of the above through substantial oral or documentary evidence. One must not forget that the plaintiff has the burden of proving damages. In *Lee Sau Kong v Leow Cheng Chiang* [1961] 1 MLJ 17; [1960] 1 LNS 15, His Lordship CA Thomson CJ observed on the general position of damages:

> With regard to the claim for damages I would preface what I have to say by quoting the following passage from the judgment of Lord Goddard in the case of *Bonham-Carter v Hyde Park Hotel, Ltd* [1948] 64 TLR 177, 178:
>
> > Plaintiffs must understand that if they bring actions for damages it is for them to prove their damage; it is not enough to write down the particulars, and, so to speak, throw them at the head of the court, saying: This is what I have lost; I ask you to give me these damages. They have to prove it.

[107] A similar sentiment can be found in *Saul Hamid bin Pakir Mohamad v Inspector Abdul Fatah bin Abdul Rahman & Anor* [1999] 6 MLJ 800, where Her Ladyship Zaleha Zahari J (as Her Ladyship then was) said at p 824:

> I hold that the failure on the part of the plaintiff to lead evidence or produce documents to determine quantum allegedly due to him is fatal to the plaintiff's case. At the end of trial as there was no evidence to support the plaintiff's claim as to damages I hold that the plaintiff has therefore not discharged the onus on him and accordingly not entitled to any.

[108] It is noteworthy, in this regard, that the plaintiff has not complained or reported that he was exposed to inhumane conditions or abuse during his detention, which might have caused severe emotional distress. Consequently, there is no evidence that the plaintiff suffered from anxiety, depression, or stress disorders as a result of his detention.

[109] However, despite the above, it cannot be denied that the plaintiff was in any event falsely imprisoned. As a result, this justifies the award of damages made above.

[110] The following authorities have been taken into account in determining the amount of RM2,000 per day. In *Selvakumar a/l Subramaniam v Penguasa Pusat Pemulihan Akhlak, Simpang Renggam, Johor Darul Takzim & Ors* [2014] 7 MLJ 244, the High Court awarded RM779,500 for wrongful detention lasting 826 days. Next, in *Badrul Zaman PS Md Zakariah v Superintendent, Preventive Detention Centre, Kamunting & Ors* [2010] MLJU 2239; [2011] 4 CLJ 873, the High Court awarded RM20,000 per day for a wrongful detention period of 300 days, amounting to RM3m. Subsequently, the Court of Appeal reversed this decision and replaced it with RM1,000 per day, totalling RM300,000 (see *Penguasa Tempat Tahanan Perlindungan Kamunting, Taiping & Ors v Badrul Zaman PS Md Zakariah* [2014] MLJU 195; [2014] 7 CLJ 533). Meanwhile, in *Dr Muhamad Fadly Ramly v Brig Jen (Dr) Dato' Hj Samiran & Ors* [2013] MLJU 1734; [2013] 5 CLJ 872, the High Court awarded RM2,000 per day for 141 days, totalling RM282,000.

[111] Additionally, I consider that the first and second arrests were lawful, and only the detention order was unlawful. Thus, false imprisonment only began on 22 January 2020 after the seventh defendant issued the detention order.

[112] As a result, judging by the above authorities, I find the amount of RM2,000 is reasonable.

[113] On top of that, a further RM132,000 is also awarded as exemplary and aggravated damages, representing 1/4 of the amount of general damages. It is from the decision of His Lordship Azizul Azmi Adnan J (as His Lordship then was) in the case of *Ananthagopi Alaguganesan v Menteri Dalam Negeri & Ors* [2025] 8 MLJ 181 at p 210; [2024] 10 CLJ 539 at pp 566–567, that I take guidance on the imposition of the percentage of 25% of the compensatory damages assessed:

> [104] I assessed exemplary damages at 25% of the restitutive damages awarded. I drew guidance from the following passage in the Court of Appeal decision in *Sin Heap Lee-Marubeni Sdn Bhd v Yip Shou Shan* [2004] 4 CLJ 35 ; [2005] 1 MLJ 515:
>
> > 48. There is no fixed formula or rate in awarding exemplary damages. In the present appeal, the trial judge awarded the sum of RM900,000. In his judgment the learned judge stated that he followed the formula in *Templeton v Low Yat Holdings Sdn Bhd* [1993] 1 MLJ 443 where the court awarded exemplary damages of about 25% of the compensatory damages assessed. In the present appeal the compensatory damages by the learned judge was RM3.2m and 25% of that would be RM900,000. That was how the learned judge arrived at the figure. I see no reason to disturb the award made by the learned judge.

[114] Thus, there is a total award of RM660,000 for damages.

[115] In addition, I am not allowing special damages claimed by the plaintiff due to a lack of proper documentation to support such a claim. This award cannot be justified based on the oral testimony of PW2, the plaintiffs alleged employer, without receipts, supporting documents, or evidence of statutory payments.

[116] I also allow interest on damages at the rate of 5%pa from the date of service of the writ until the date of full payment.

CONCLUSION

[117] Given the specific findings as mentioned above, I am only allowing the plaintiffs claim for general damages, interest, and costs.

[118] In light of the above, the plaintiffs claim is allowed with cost of RM30,000, subject to allocatur.

Plaintiff's claim allowed.

Reported by K Selvaraju